BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

The Iowa Supreme Court in its decision did violence to the 5th and 14th Amendments to the Constitution of the United States wherein it is stated that no person shall be deprived of life, liberty or property without due process of law. Had the Iowa District Court entered an order that Pontralo, your petitioner, deliver Clark for trial immediately upon his release from the custody of the Nebraska authorities and upon such contingency, petitioner had failed to produce him then due process would have been had and complaint could not logically be made. It is conceded that if a reasonable time is granted (See *Turner vs. New York,* 18 S. Ct. 38, 168 U. S. 94, 42 L. Ed. 392; *Saravac vs. Comptroller,* 1900, 20 S. Court 642, 177 U. S. 318, 44 L. Ed. 786) no complaint could be made.

But it is not reasonable to require production of a defendant in a criminal case when it is manifest that the bondsman has tried to produce his presence and been unable to do so because of the restraint imposed by the penal authorities of another state.

The Iowa Court in its decision also went clearly contrary to the United States Constitution (14th Amendment) in not alone depriving petitioner of property without due process of law but denying the equal protection of the laws to petitioner considering that both petitioner and the Iowa Supreme Court were powerless to enter or cause to be entered any order or in any manner control the Nebraska Courts or prison officers. That in thus ignoring petitioner's rights, the Court's decision was unreasonably taken and shockingly violative of petitioner's rights under the Constitution.

1. In a proceeding for judgment on forfeiture of bail bond for non-appearance for trial both the principal and surety are by statute afforded right to show cause why forfeiture should be set aside and judgment instanter denied.

Sections 13631, 13632 and 13636, Code of 1939.

2. Circumstances shown in excuse of a defendant's non-appearance may be sufficient to require a setting aside of the forfeiture of his bail bond and a denial of judgment.

State v. Thomason, 226 Iowa 1057, 285 N. W. 636.

State v. Arioso, 207 Iowa 1109, 224 N. W. 56.

6 Am. Jur., 101, Sec. 137.

Annotation, 7 A. L. R. 392.

Annotation, 8 A. L. R. 363.

Annotation, 84 A. L. R. 444.

3. The purpose of the criminal law is to secure punishment of criminals and not to have the State profit financially by the collection of a judgment or a forfeiture of bail bond.

Bruntlett v. Carroll County, 193 Iowa 875, 188 N. W. 142.

State v. Sandy, 138 Iowa 580.

State v. Thomason, 226 Iowa 1057, 285 N. W. 636.

4. While the arrest and detention of a defendant in another state preventing appearance for trial in this state does not operate to discharge his bail, such excuse for failure to appear for trial, accompanied by showing of effort by surety to produce defendant for trial, that defendant is not attempting to evade trial, that he can be

delivered for trial after release from foreign custody, and request for continuance order and other order of court fully protecting the rights of all parties affords sufficient cause for setting aside forfeiture and postponing judgment a reasonable time.

3 R. C. L. 53, Sec. 64.

6 Am. Jur. 103, Sec. 140.

State v. Thomason, 226 Iowa 1057, 285 N. W. 636.

State v. Arioso, 207 Iowa 1109, 224 N. W. 56.

6 Am. Jur. 119, Sec. 185.

6 Am. Jur. 120, Sec. 189.

5. Where the discretion exercised by the court was a legal one, and only questions of law are involved the decision of the trial court will be reversed on appeal if not based on sufficient grounds.

Swan v. City of Indianola, 142 Iowa 731.

Hart v. Stence, 219 Iowa 55, 97 A. L. R. 535.

Bennett v. Ryan, 206 Iowa 1236.

SUMMARY

I.

The arbitrary decision of the State Supreme Court in affirming the judgment of the lower court forfeiting the bond against Petition is in direct conflict with applicable decisions of the Federal Court and the principle of law that the surety on a bond cannot do the impossible or override constituted authority in obtaining a principal's presence.

II.

That the Iowa Supreme Court totally ignored the petitioner's rights under the Constitution of the United States in thus entering a decision which amounted to deprivation of property without due process of law.

III.

That the Iowa court by charging a forfeiture when petitioner found it physically and legally impossible to bring the principal into court when held by the authorities of another state, invaded petitioner's rights under the Constitution which in effect states that no state shall enforce a law which abridges the privileges of a citizen of the United States or deprive him of property without due process of law or deny him equal protection of the laws when it would patently appear that no authority existed either in the Iowa court or petitioner to control the action of the Nebraska courts or prison officials.

Article 14, Constitution of the United States.

CONCLUSION

Your petitioner has tried to keep within the rules which govern applications for Writ of Certiorari by limiting this brief in all possible respects. A hearing upon the merits will, of course, disclose more fully the evil of the State Court's judgment. We submit, however, that we have shown that the petitioner's constitutional rights have been violated and that the State Court's judgment is in direct conflict with the Constitution of the United States and decisions of the Federal Courts and the gen-

eral rule of law in similar questions and that no opportunity was given him to perform his obligation under the bond at the time when the restraint imposed with apparent legality by the State of Nebraska would end. That while the amount of the judgment obtained in this case is not of great magnitude compared to sums involved in many cases heard by this Court, it is a matter of concern to your petitioner that his rights be protected under the State and Federal law. We therefore earnestly pray the Court to grant the writ that these rights may be protected.

Respectfully submitted,

JAMES PONTRALO,
By GORDON A. NICHOLSON,
Attorney for Petitioner.

FRANK L. BURBRIDGE,
CARL V. BURBRIDGE,
ROY E. HAVENS,
Of Counsel.